

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Gregory Stone, et al.,

Plaintiffs,

v.

Federal Bureau of
Investigation, et al.,

Defendants.

Civil Action No. 87-1346

FILED

JAN 11 1989

OPINION OF CHARLES R. RICHEY
UNITED STATES DISTRICT JUDGE

Clerk, U.S. District Court
District of Columbia

This Freedom of Information Act suit arises out of plaintiffs' request for the identities of certain FBI personnel and local law enforcement officers whose names appear in FBI files pertaining to the assassination of Senator Robert F. Kennedy. Defendants have withheld the identities of most FBI Special Agents, FBI clerical employees, and local law enforcement officers revealed in these files pursuant to Exemption 7(C) (unwarranted invasion of personal privacy). They have, however, released to plaintiff the names of FBI agents having knowledge of the overall investigation of the assassination of Senator Kennedy rather than a particular aspect of it as well as the names of FBI and local law enforcement personnel who have been publicly identified in the same context as they are identified in these files.

Now before the Court is defendants' motion for summary judgment. Also before the Court is plaintiffs' motion to lift this Court's protective order staying discovery and to extend the time for filing a response to defendants' motion for summary

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judgment pursuant to Fed. R. Civ. P. 56(f). After careful consideration of plaintiffs' motion, the supporting and opposing legal memoranda, defendants' summary judgment motion and the accompanying affidavits, and the underlying law, the Court will deny plaintiffs' motion to lift the protective order staying discovery in this case.

In contrast to the wide-ranging discovery available in most civil suits, discovery in FOIA suits is often circumscribed. Courts may, and often do, grant summary judgment solely on the basis of government affidavits that are relatively detailed, non-conclusory, and submitted in good faith, as long as the plaintiff has no significant basis for questioning their reliability. See, e.g., Coastal State Gas Corp. v. Dep't of Energy, 617 F.2d 854, 861 (D.C. Cir. 1980); Goland v. CIA, 607 F.2d 339, 352-55 (D.C. Cir. 1978), cert. denied, 445 U.S. 927 (1980); Shurberg Broadcasting of Hartford, Inc. v. Federal Communications Commission, 617 F. Supp. 825, 831 (D.D.C. 1985). When discovery is available in a FOIA suit, it is usually dedicated to either testing the completeness of the agency's search or countering statements made in the government's summary judgment motion. See, e.g., Military Audit Project v. Casey, 656 F.2d 724, 738, 750-52 (D.C. Cir. 1981); National Cable Television Association, Inc. v. Federal Trade Commission, 479 F.2d 183, 193 (D.C. Cir. 1975); Murphy v. Federal Bureau of Investigation, 490 F. Supp. 1134, 1137 (D.D.C. 1980).

Plaintiffs do not contend that the defendants' search was

incomplete. Rather, they maintain that the affidavit defendants submitted along with their motion for summary judgment is "an insufficient and unreliable basis for determining the relevant facts in this case because it omits the facts sought by plaintiff's discovery." Plaintiffs' Reply to Defendants' Response to Motions to Vacate Protective Order and for Extension of Time Pursuant to Rule 56(f).

Plaintiffs argue that the FBI employees whose identities are at issue never had an expectation of privacy "of sufficient magnitude and certainty" to justify the withholding of their names pursuant to Exemption 7(C) because of the "historical" significance of this investigation. Plaintiffs' Motions to Vacate Protective Order and for Extension of Time Pursuant to Rule 56(f) at 5-6. Through discovery, plaintiffs wish to obtain additional information concerning the expectation of privacy enjoyed by FBI employees in the performance of their official duties as well as information on whether any such expectation is eroded with the passage of time. Id.

This case law of this Circuit provides answers to the questions on which plaintiffs are trying to obtain discovery. It is now well recognized in this Circuit that although FBI agents and other law enforcement personnel may enjoy a lesser expectation of privacy than that enjoyed by private citizens by virtue of their official status; their status does not cause them to "forgo altogether any privacy claim in matters related to official business." Lesar v. United States Dep't of Justice, 636

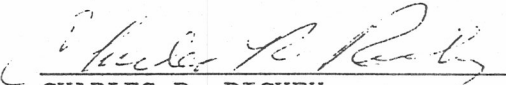
F.2d 472, 487 (D.C. Cir. 1980). These individuals "have a legitimate interest in preserving the secrecy of matters that conceivably could subject them to annoyance or harassment in either their official or private lives." Id. FBI agents or other law enforcement personnel could conceivably be subjected to annoyance or harassment were their names to be disclosed in the context of an investigation in which they were participants. See, e.g., King v. United States Dep't of Justice, 830 F.2d 210, 233 (D.C. Cir. 1987); Senate of Puerto Rico v. United States Dep't of Justice, 823 F.2d 574, 588 (D.C. Cir. 1987); Weisberg v. United States Dep't of Justice, 745 F.2d 1476, 1491 (D.C. Cir. 1984); Lesar, 636 F.2d at 487. Moreover, the risk that FBI or other law enforcement personnel could be subjected to annoyance or harassment resulting from the disclosure of their names does not necessarily subside with the passage of time. See, e.g., Keys v. United States Dep't of Justice, 830 F.2d 337, 348 (D.C. Cir. 1987).

In evaluating an Exemption 7(C) claim, the Court's role is to "'balanc[e] the privacy interest[s] at stake against the public interest in disclosure.'" King v. United States Dep't of Justice, 830 F.2d 210, 233 (D.C. Cir. 1987) (quoting Lesar, 636 F.2d at 486). Plaintiff's emphasis on the fact that this case is of historical significance is misplaced at this juncture. The historical significance of the case should be emphasized not in examining the privacy interests at stake, but instead when evaluating the countervailing public interest in disclosure.

The Court reminds plaintiffs that they have the burden of 'support[ing] "adequately . . . [their] 'public interest' claim with respect to the specific information being withheld"' in any opposition that they may file to defendants' motion for summary judgment. Id. at 234.

The Court will issue an Order of even date herewith memorializing these findings.

January 10th, 1989


CHARLES R. RICHEY
UNITED STATES DISTRICT JUDGE

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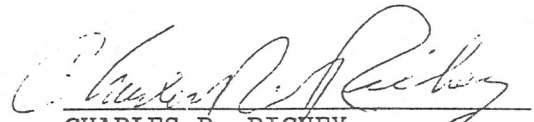
ORDER

Clerk, U.S. District Court
District of Columbia

In accordance with the Court's Opinion of even date herewith, it is, by the Court, this 10 day of January, 1989,

ORDERED that plaintiffs' motion to lift the protective order staying discovery in this case shall be, and hereby is, denied; and it is

FURTHER ORDERED that plaintiffs shall file on or before February 3, 1989 at 4:00 p.m. any opposition to defendants' motion for summary judgment.


CHARLES R. RICHEY
UNITED STATES DISTRICT JUDGE

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